

502

94024142

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CLEARBROOK VILLAGE AND CLEARBROOK LAKES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CLEARBROOK VILLAGE AND CLEARBROOK LAKES ("Declaration"), is made this 4 day of NOVEMBER, 1994, by McGinnis/Alton Partnership, an Indiana general partnership (hereinafter referred to as "Declarant"),

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real estate located in Johnson County, Indiana, more particularly described in the attached Exhibit A ("Real Estate"); and

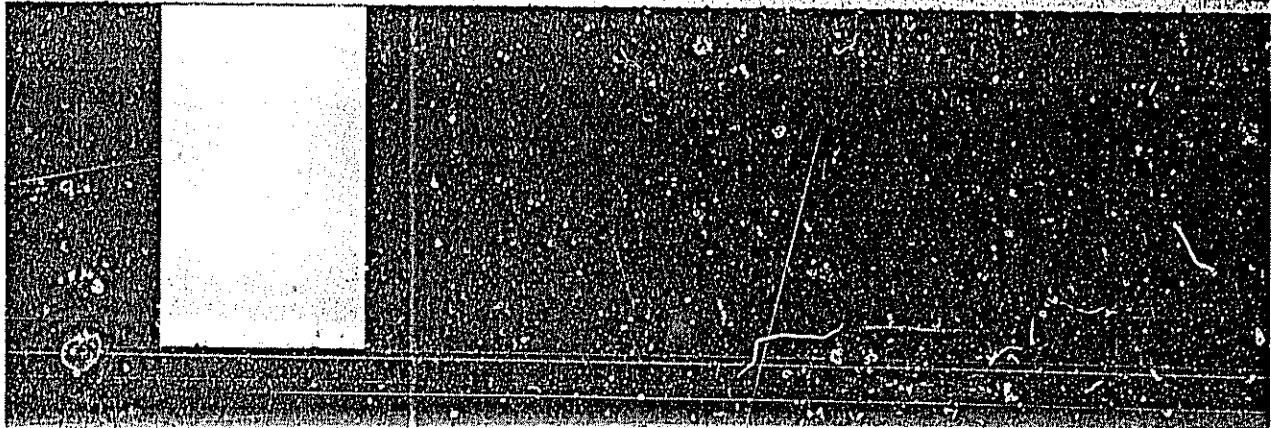
WHEREAS, part of the Real Estate is being developed as a Subdivision known as CLEARBROOK VILLAGE, described on Exhibit A; and

WHEREAS, the balance of the Real Estate is being developed as a Subdivision known as CLEARBROOK LAKES, described on Exhibit A; and

WHEREAS, Declarant intends to sell and convey Half-Lots within CLEARBROOK VILLAGE and Lots within CLEARBROOK LAKES and desires to subject both of those platted subdivisions to certain covenants and restrictions ("Covenants") in order to ensure that the development and use of the various Half-Lots and Lots in the platted subdivisions are harmonious and do not adversely affect the use or value of surrounding Half-Lots and Lots in the platted subdivisions; and

WHEREAS, Declarant desires to provide for maintenance of the ponds, Common Areas, and other improvements within the platted subdivisions which are of common benefit to the Owners of the various Half-Lots and Lots within said platted subdivisions, and to that end desires to impose upon the Owners thereof certain obligations, including but not limited to assessments and charges for maintenance and other costs related to the operation of CLEARBROOK VILLAGE and CLEARBROOK LAKES;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate as it is now held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, is subject to the following Covenants. All of the Covenants shall run with the Real Estate and shall be binding upon the Declarant and upon the parties having or acquiring any right, title, or interest, legal or equitable, in and to the Real Estate or any part or parts thereof and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate or any part or parts thereof.



ARTICLE I.

General Purpose of This Declaration

The Real Estate is hereby subjected to the Covenants herein declared to preserve the value of the Real Estate, to ensure proper use and appropriate improvement of the Real Estate, to encourage the construction of attractive buildings and other attractive improvements at appropriate locations on the Real Estate, to prevent haphazard development thereof which may be inharmonious with other improvements on the Real Estate to preserve and maintain proper setbacks from streets and adequate free space between structures, and to provide for adequate and proper maintenance of the Real Estate all in compliance with applicable requirements of relevant governmental agencies.

ARTICLE II.

Definitions For All Purposes Of This Declaration

The following terms, whenever used in this Declaration, shall have the meanings assigned to them by this Article II:

Section 1. CLEARBROOK VILLAGE. "CLEARBROOK VILLAGE" means the Real Estate which is being developed by the Declarant and which will be identified as CLEARBROOK VILLAGE on a plat to be recorded by the Declarant, with the Recorder of Johnson County following final plat approval.

Section 2. CLEARBROOK LAKES. "CLEARBROOK LAKES" means the Real Estate which is being developed by the Declarant and which will be identified as CLEARBROOK LAKES on a plat to be recorded by the Declarant, with the Recorder of Johnson County following final plat approval.

Section 3. Assessment. "Assessment" means the share of the Common Expenses imposed upon and against each Half-Lot and Lot as determined and assessed pursuant to the provisions of this Declaration.

Section 4. Association. "Association" means the Clearbrook Homeowners' Association, Inc., an Indiana not-for-profit corporation, formed or to be formed for the purpose of determining and collecting the Assessments and overseeing and enforcing the terms of this Declaration.

Section 5. Architectural Control Committee. "Architectural Control Committee" means two separate committees, one for CLEARBROOK VILLAGE and one for CLEARBROOK LAKES, each of which shall be composed of up to three members appointed by the Board of Directors of the Association and each of which shall review and

approve all plot plans, plans, and specifications prior to the commencement of construction, of any kind, within the subdivision to which each is related.

Section 6. Common Areas. "Common Areas" means certain areas not amenable to development which may be designated as Ponds, Detention Area or Common Area on the plats of CLEARBROOK VILLAGE and CLEARBROOK LAKES, and not part of any Half-Lot or Lot and which are intended for the common benefit of all Half-Lots and Lots within CLEARBROOK VILLAGE and CLEARBROOK LAKES.

Section 7. Common Expense. "Common Expense" means the actual or estimated cost to the Association for maintenance, management, operation, repair, improvement, and replacement of Common Areas, and any other cost or expense incurred by the Association for the benefit of the Common Areas, or the administration and management of the Association, including but not limited to insurance costs, legal and accounting costs, and costs of other appropriate services.

Section 8. Declarant. "Declarant" means McGinnis/Alton Partnership, an Indiana general partnership, or any other person, firm, corporation or partnership which succeeds to the interest of McGinnis/Alton Partnership, as developer of CLEARBROOK VILLAGE and CLEARBROOK LAKES.

Section 9. Drainage System. "Drainage system" means the storm sewers, subsurface drainage tiles, pipes, and other structures, fixtures, properties, equipment and facilities located in, upon, or under the Common Areas, Easements, or Streets and designed for the purpose of directing and expediting the drainage of surface and subsurface waters from, over, and across CLEARBROOK VILLAGE and CLEARBROOK LAKES.

Section 10. Easements. "Easements" refer to those areas reserved as easements on the plats of CLEARBROOK VILLAGE and CLEARBROOK LAKES.

Section 11. Lot. "Lot" means any of the separate parcels as identified on the plat of CLEARBROOK LAKES.

Section 12. Half-Lot. "Half-Lot" means any of the separate parcels created, or which could potentially be created, on the plat of CLEARBROOK VILLAGE

Section 13. Mortgagee. "Mortgagee" means any holder, insurer, or guarantor of any first mortgage on any Half-Lot or Lot.

Section 14. Owner. "Owner" means any person or persons who acquire, after the date of this Declaration, legal and/or equitable title to any Half-Lot or Lot; provided, however, that "Owner" shall not include any holder of any mortgage of all or any part of any

Half-Lot or Lot, so long as such holder does not hold both legal and equitable title thereto.

Section 15. Sewage System. "Sewage System" means any sanitary sewer lines, lift stations, equipment, or facilities located in, upon, or under the Common Areas, Easements, or Streets and designed to provide for the discharge, disbursement, or treatment of sanitary sewage from any or all Half-Lots or Lots and Common Areas, as the same are or may be constructed at any time, and any replacement thereof or substitute therefor.

Section 16. Streets. "Streets" means all of the public and private roadways to the respective right-of-way lines thereof, as will be shown on the plats of CLEARBROOK VILLAGE and CLEARBROOK LAKES, which have been or hereafter are constructed for the purpose of providing common access for Owners, occupants and their guests and invitees, to any or all Half-Lots or Lots.

### ARTICLE III.

#### General Restrictions

Section 1. Maintenance of Premises. In order to maintain the standards of the property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Half-Lot or Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Owner shall maintain their Half-Lot or Lot and improvements situated thereon in a manner so as to prevent the Half-Lot or Lot or improvements from becoming unsightly, and specifically, Owner shall:

(a) Mow the Half-Lot or Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds. Grass allowed to grow to a height in excess of six inches (6") shall be deemed unsightly.

(b) Cut down and remove dead trees.

(c) Keep the exterior of all improvements in such state of repair or maintenance so as to avoid their becoming unsightly as may be determined by the Board of Directors of the Association, in its sole discretion.

(d) Prevent the existence of any other condition that reasonably tends to detract from or diminish the appearance of the Half-Lot or Lot and/or CLEARBROOK VILLAGE and CLEARBROOK LAKES.

Upon an Owner's failure to comply with these provisions, the Declarant, the City of Greenwood or the Association may cut the growth or weeds, or clear the refuse from the Half-Lot or Lot at the expense of the Owner, and there shall be a lien against said

Half-Lot or Lot for the expense thereof.

Section 3. Residential Purpose. Half-Lots and Lots shall be used exclusively for residential purposes. No building shall be erected, altered, placed or permitted on any Half-Lot or Lot other than a dwelling not to exceed two (2) stories in height. A dwelling shall have an attached garage of a size to accommodate at least two (2) cars.

Section 4. Setbacks. No building shall be located nearer to the front Half-Lot or Lot line or nearer to the side street line than the minimum building setback lines shown on the plats. The minimum width of side yards for any Half-Lot or Lot shall be eight feet (8'), and no part of any building shall be located less than eight feet (8') from any line separating Half-Lots or Lots, except as may be specifically permitted on Half-Lots in CLEARBROOK VILLAGE, pursuant to Article IV herein. No part of any building shall be located within any easement as shown on the plat. For purposes of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a Half-Lot or Lot, including eaves, steps, and open porches, to encroach upon another Half-Lot or Lot.

Section 5. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat.

Section 6. Unoperative Parked Vehicles. At no time shall any unlicensed or inoperative vehicle be permitted on any Half-Lot or Lot, Common Area, street or easement unless kept entirely within a garage.

Section 7. Trucks, Boats, Recreational Vehicles. Heavy equipment, tractors, commercial vehicles, semi-trucks, trailers, mobile homes, recreational vehicles, boats, boat and utility trailers, and all other similar equipment shall not be permitted to be kept on any Half-Lot or Lot unless entirely kept within a garage.

Section 8. Nuisances. No noxious, obnoxious or offensive activity shall be carried on upon any Half-Lot or Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. This provision may be construed to prohibit extremely audible music or activities.

Section 9. Drainage Ditches. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the City of Greenwood Board of Public Works and Safety. Property Owners must maintain these swales as sodded grassways, or other non-eroding

surfaces. Water from roofs or parking areas must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the City of Greenwood Board of Public Works and Safety.

Any Owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given 10 days notice by certified mail to repair said damage, after which time, if no action is taken, the City of Greenwood Board of Public Works and Safety will cause said repairs to be accomplished at the Owner's expense. Failure to pay such expenses immediately upon receiving a bill will result in a lien against the property.

Section 10. Signs. No sign of any kind shall be displayed to the public view on any Half-Lot or Lot except one professionally manufactured sign of not more than five square feet advertising the property for sale or rent.

Section 11. Mining Operations. No oil drilling, oil development operation, oil refining quarrying, or mining operations of any kind shall be permitted upon or in any Half-Lot or Lot nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Half-Lot or Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Half-Lot or Lot.

Section 12. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Half-Lot or Lot, except that dogs, cats, or other household pets may be kept provided that they are not bred, kept or maintained for any commercial use and are confined, at all times, within the boundaries of their Owner's Half-Lot or Lot, unless restrained by a leash and attended by their Owner. No outdoor kennels, doghouses, or other structures designed or used as a shelter for any such pets shall be permitted on any Half-Lot or Lot. In every case, dogs, cats, and other household pets which are excepted under this section, shall be kept in a manner that does not constitute an annoyance to the Owners of other Half-Lots or Lots, and does not adversely affect their use and enjoyment of their property.

Section 13. Rubbish, Trash, Garbage and Recyclables. Rubbish, trash, garbage, other waste, and recyclable materials shall not be dumped or accumulated on any Half-Lot or Lot. All such materials shall be kept in appropriate containers which are not visible from the street, except on collection days.

Section 14. Corner Half-Lot or Lot. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 8 feet above roadways shall be placed or permitted on any corner Half-Lot or Lot within the triangular area formed by the

street property line and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersections of the street lines extended. The same sight line limitations shall apply on any Half-Lot or Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of such sight lines.

Section 15. Field Tiles. Any field tile or underground drain which is on any Half-Lot or Lot must be allowed to perpetuate.

Section 16. Minimum Living Space. The minimum square footage of living space of dwellings within CLEARBROOK VILLAGE, exclusive of porches, garages or basements shall be no less than:

- (a) 900 square feet for single story dwellings; and
- (b) 1,200 square feet (aggregate) for two-story dwellings.

The minimum square footage of living space of dwellings within CLEARBROOK LAKES, exclusive of porches, garages, or basement shall be no less than:

- (a) 1,200 square feet for single story dwellings; and
- (b) 1,400 square feet (aggregate) for two-story dwellings.

Section 17. Outbuildings. No outbuildings of any kind, detached garages, sheds, barns, storage buildings, shacks or tents shall be permitted on any Half-Lot or Lot.

Section 18. Driveways And Carports. All driveways must be paved with concrete, asphalt or other all-weather surface excluding gravel. No carports are permitted.

Section 19. Communication Devices. Satellite dishes, free standing antennas, or any other such visible communication receiving or transmitting devices are prohibited.

Section 20. Mail Boxes. Mailboxes and the posts on which they are mounted shall be of uniform size, height, design, and color as specified by the Declarant. Owners shall be prohibited from altering the appearance of their mailboxes or the posts on which they are mounted, except to make repairs to and maintain or replace the mailboxes or the posts on which they are mounted in a manner which is consistent with the uniform appearance as specified by the Declarant. Owners shall keep their mailboxes in a good state of repair at all times.

Section 21. Yard Lights. Post lights shall be mounted in

each yard in a standard location as specified by the Declarant, and shall be operated by photoelectric cells, installed as a part of the original development of each Half-Lot or Lot. Owners shall be prohibited from removing or altering the appearance of the post lights in any manner except to repair, maintain, or replace the post lights as necessary to maintain the uniform appearance as specified by the Declarant. Owners shall keep their yard lights in good repair at all times.

Section 22. Wells And Septic Tanks. No water wells shall be drilled on any Half-Lot or Lot. Septic tanks shall be prohibited on all Half-Lots and Lots.

Section 23. Swimming Pools. Above-ground swimming pools are prohibited.

Section 24. Construction, Earth-Moving, Excavation. No construction, significant earth-moving, or excavating work of any nature may be conducted on any Half-Lot or Lot.

Section 25. Fences, Walls, Barriers. All fences, walls, barriers or like structures must be approved in writing by the appropriate Architectural Control Committee prior to their construction. No such structures shall exceed eight feet (8') in height. No such structure shall be placed closer to the front Half-Lot or Lot line than the front building setback line.

Section 26. Uniform Exterior Appearance; Maintenance, Repair, Replacement. Owners shall keep the exterior of their premises in a good state of repair at all times.

Section 27. Decorative Structures. No decorative structures, statues, or other apparatus shall be permitted on any Half-Lot or Lot at any time. This section shall not preclude Owners from decorating their Half-Lots or Lots or structures during appropriate holiday seasons in a manner that is not offensive or disruptive to the other Owners as may be determined by the Board of Directors of the Association in its sole discretion.

#### ARTICLE IV.

##### Clearbrook Village; Common Wall and Driveway Covenants and Restrictions; Uniform Exterior Appearance

Section 1. Each Half-Lot shall be conveyed as a separately designated legally described free hold estate, subject to the covenants, conditions and restrictions of this Declaration.

Section 2. Half-Lots designated in the plat of CLEARBROOK VILLAGE are hereby reserved for attached, single-family residential use and will have erected thereon dwellings which shall have walls



which shall share a common foundation with a similar single-family dwelling on the adjoining Half-Lot. The two separate walls of the individual separate dwellings which are built on the one common foundation shall hereinafter be referred to as "Common Wall". The Common Wall shall become a part of the common Half-Lot lines between the two Half-Lots. Each wall which is built as a part of the original construction of the dwellings upon the Half-Lot and connects the two dwelling units shall constitute a Common Wall, and to the extent not inconsistent with the Declaration, the general rules of law regarding Common Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. The Owners of the two adjoining Half-Lots shall possess easements in the Common Wall which may only be used for the joint purposes of the structure which it divides.

Section 4. Should the Common Wall at any time be injured by any cause other than an act or omission of either of the adjoining Half-Lot Owners, the Common Wall shall be repaired or rebuilt at the joint expense of the adjoining Half-Lot Owners, provided that any sum received from insurance against such injury or destruction shall be first applied to such repair or restoration. Should the Common Wall be injured by an act or omission of one of the two adjoining Half-Lot Owners, the Common Wall shall be repaired and rebuilt at the expense of Half-Lot Owner deemed responsible for such act or omission.

Section 5. Owners shall be prohibited from activities including those which present a threat to or stress upon the stability of the structural integrity of the Common Wall, increase the risk of accidental damage to the Common Wall or any other similar detrimental or dangerous activities or omissions relative to the Common Wall.

Section 6. All Owners must carry such insurance sufficient to repair or replace any damaged or destroyed Common Walls.

Section 7. Half-Lot Owners of adjoining Half-Lots which were constructed with a partial common driveway shall possess and share a common easement over the undivided portion of the driveway. Said portion may not be altered without the written agreement of the adjoining Half-Lot Owner.

Section 8. Owners shall not in any way alter the exterior or appearance of their dwelling by changing the structure, design, style, type or part of any of the exterior portions of the dwelling, except as may be necessary to perform standard maintenance, in which case the Owner shall, in the course of such maintenance, repair or replacement, utilize the same style, type, and color of materials as were used for the original construction.

Section 9. The Common Wall and Driveway covenants within this Article, shall run with both Half-Lot Owners utilizing the Common Wall and Driveway, but shall not operate to convey to either Half-Lot Owner the fee to any part of the land owned or to be acquired by the other Half-Lot Owner.

ARTICLE V.

Ponds and Detention Area Covenants and Restrictions

Section 1. The ponds and detention area shown on the plats (hereinafter "Ponds") shall be included as Common Areas as referenced herein, to be maintained and controlled by the Association.

Section 2. The Association shall be responsible for formulating rules and regulations pertaining to the usage of the Ponds as well as creating an annual budget of costs to adequately maintain, and repair of the Ponds and Detention Areas, said costs shall be included as part of the Owner's annual assessment.

Section 3. Access to the Ponds is restricted to that available from the Streets within CLEARBROOK VILLAGE or CLEARBROOK LAKES, and access through any Half-Lot or Lot or from outside CLEARBROOK VILLAGE or CLEARBROOK LAKES is strictly prohibited.

Section 4. The Ponds may be used only in the manner authorized by the Association.

Section 5. The Ponds shall be available for the exclusive use of the Owners and guests of the Owners who are accompanied by Owners.

Section 6. No privately owned property of any kind shall be allowed to remain within the Ponds areas except when the Owner of such property is present.

Section 7. No docks or piers will be allowed except those which may be authorized by, constructed, owned, and operated by the Association.

Section 8. No Owner or third party shall do or permit another to do any act which would or may pollute the Ponds, divert any water, raise the elevation of the water, significantly disturb the earth or the embankment of the Ponds areas, or any other conduct which could result in an adverse effect upon the water quality, embankment and adjacent property, drainage, or any other general condition of the Ponds.

Section 9. The Association, on behalf of the Owners, or the City of Greenwood shall have the authority to institute an action

for injunction to abate such activity or seek mandatory relief for correction of any damage caused to the Ponds or interference with the drainage system, together with any damages incurred, costs, and reasonable attorneys' fees.

ARTICLE VI.

Declarant's/Association's Right To Guarantee Compliance

Section 1. In the event the Owner of any Half-Lot in CLEARBROOK VILLAGE or Lot in CLEARBROOK LAKES shall fail to maintain that Half-Lot or Lot or any of its improvements situated therein in accordance with the provisions of these Covenants, Conditions and Restrictions, the Association or, prior to the Association's incorporation, the Declarant, shall have the right, but not the obligation, by and through its agents and employees or contractors to enter upon said Half-Lot or Lot, and perform such acts as may be reasonably necessary to make such Half-Lot or Lot and improvements thereon, if any, conform to the requirements of these Covenants, Conditions and Restrictions. The cost thereof to the Association or Declarant shall be collected in any reasonable manner from the Owner. Neither the Association/Declarant nor any of its agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

ARTICLE VII.

Architectural Control Committees

Section 1. Appointment Of Architectural Control Committees. The Board of Directors of the Association shall appoint an Architectural Control Committee for CLEARBROOK VILLAGE AND CLEARBROOK LAKES, each of which shall be composed of up to three (3) members.

Section 2. Construction Approvals. No construction of any kind, including additions, alterations, fences, screens and walls, shall begin within CLEARBROOK VILLAGE or CLEARBROOK LAKES until a detailed plot plan, and plans and specifications have been submitted to and approved by the appropriate Architectural Control Committee. The plans and specifications of and location of all buildings, structures, and other improvements shall be in compliance with all building and other applicable regulatory codes, and shall also comply with zoning covenants and restrictions which are applicable to the Real Estate. Disapproval of plans and specifications and/or plot plans may be based on any grounds, including purely aesthetic grounds, in the sole and absolute discretion of the Architectural Control Committees. Neither the Architectural Control Committee nor the Association/Declarant shall

be responsible for any defects in such plans or specifications, or in any building, structure, or improvement erected according to such plans and specifications.

The plans and specifications submitted to the Architectural Control Committee shall contain a plot plan to scale with adequate provision for landscaping, including the planting of trees and shrubs. The determination of whether adequate provision has been made for landscaping shall be at the sole discretion of the Architectural Control Committees. The required landscaping and driveways shall be completed at the time of completion of the building, or as soon as weather and season permit.

Section 3. Powers of Committee. (i) In General. No dwelling, building, structure, improvement, exterior alteration or change of original color or material shall be constructed, placed or performed on any Half-Lot or Lot in CLEARBROOK VILLAGE or CLEARBROOK LAKES unless the appropriate Architectural Control Committee chooses to grant a special exception. Such a special exception may be requested by written application to the Committee from the Owner of the Half-Lot or Lot. Such written application shall be in the manner and form prescribed from time to time by the Committees, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction, improvement or alteration. Such plans shall include plot plans where applicable, showing the location of all improvements existing under or upon the Half-Lot and the location of the improvement proposed to be constructed or placed upon the Half-Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. (ii) Specific. The Architectural Control Committees may adopt and enforce rules, guidelines, and specifications for the construction of dwellings, buildings, structures, and other improvements in CLEARBROOK VILLAGE and CLEARBROOK LAKES, including but not limited to approved construction materials, colors, and designs. The Architectural Control Committees shall require that all structures in CLEARBROOK VILLAGE and CLEARBROOK LAKES have shingled roofs of the same or similar color, and that all front yards be sodded at the time the initial construction is completed and landscaped in a manner deemed appropriate by the Architectural Control Committees with trees and shrubs of a type and size which may be specified by the Architectural Control Committees for each of the subdivisions.

Section 4. Duties of Committees. The appropriate Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons.

Section 5. Liability of Committees. Neither the Committees nor any agents thereof, nor the Association/Declarant, shall be liable or responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

Section 6. Inspection. The appropriate Committee may inspect work being performed with its permission to assure compliance with these Covenants, or the conditions of any approval granted by the Committees.

#### ARTICLE VIII.

##### Covenants for Maintenance Assessments

Section 1. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of preserving the value of the Half-Lots or Lots within CLEARBROOK VILLAGE and CLEARBROOK LAKES, and promoting the health, safety, and welfare of the Owners, users, and occupants of the same and, in particular, for the improvement, operation, repair, and maintenance of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon and for the cost of labor, equipment, material, and management furnished with respect to the Common Property, including the Association's costs for consultants, engineers, architects, attorneys, and accountants; provided that the Association shall not be responsible for the replacement, repair or maintenance of any Common Area which is or hereafter may be dedicated to the public. Each Owner hereby covenants and agrees to pay to the Association:

- (a) A pro-rata share (as hereinafter defined) of the annual assessments fixed, established, and determined from time to time as hereinafter provided.
- (b) A pro-rata share (as hereinafter defined) of any special assessments fixed, established, and determined from time to time, as hereinafter provided.

Section 2. Liability for Assessments. Each assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees, shall be a charge on each Half-Lot or Lot and shall constitute a lien from and after the due date thereof in favor of the Association upon each Half-Lot or Lot. Each such assessment, together with any interest thereon and any costs of collection thereof, including attorneys' fees shall also be the personal obligation of the Owner of each Half-Lot or Lot at the time when the assessment is due. However, the sale or transfer of any Half-Lot or Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payment which become due prior to such sale or

transfer. No such sale or transfer shall relieve any Owner of the personal liability hereby imposed. The personal obligation for delinquent assessments shall not pass to any successor in title unless such obligation is expressly assumed by such successor.

Section 3. Pro-rata Share. The pro-rata share of each Owner for purposes of this Article shall be the percentage obtained by dividing one by the total number of Half-Lots within CLEARBROOK VILLAGE or by the total number of Lots within CLEARBROOK LAKES that have been conveyed by the Declarant to an Owner ("Pro-Rata Share").

Section 4. Basis of Annual Assessment. The Board of Directors of the Association shall establish an annual budget prior to the beginning of each fiscal year, setting forth all Common Expenses for the coming fiscal year, together with a reasonable allowance for contingencies and reserves of the Association. A copy of this budget shall be delivered to each Owner within thirty (30) days to the beginning of each fiscal year of the Association.

Section 5. Basis of Special Assessment. Should the Board of Directors of the Association at any time during the fiscal year determine that the assessments levied with respect to such year are insufficient to pay the Common Expenses for such year, the Board of Directors of the Association may, at any time, and from time to time, levy such special assessments as it may deem necessary for meeting the Common Expenses. In addition, the Board of Directors of the Association shall have the right to levy at any time, and from time to time, one or more special assessments for the purpose of defraying, in whole, or in part, any unanticipated Common Expense not provided for by the Annual Assessment.

Section 6. Notice Of Meetings. Written notice of any meeting called for the purpose of taking action to authorize assessments shall be sent to all members not less than thirty (30) days nor more than sixty (60) in advance of the meeting.

Section 7. Fiscal Year; Date of Commencement of Assessments; Due Dates. The fiscal year of the Association shall be established by the Association and may be changed from time to time by action of the Association. The annual assessments on each Half-Lot in CLEARBROOK VILLAGE or Lot in CLEARBROOK LAKES shall commence on the day on which Declarant first conveys ownership of the Half-Lot or Lot to an Owner. The first annual assessment for each Half-Lot or Lot shall be prorated for the balance of the fiscal year of the Association in which such assessment is made. The annual assessment for each year after the first assessment year shall be due and payable on the first day of each fiscal year of the Association. Annual assessments shall be due and payable in full as of the above date, except that the Association may from time to time by resolution authorize the payment of such assessments in installments.

Section 8. Duties of the Association.

(a) The Board of Directors of the Association shall cause proper books and records of the levy and collection of each annual and special assessment to be kept and maintained, including a roster setting forth the identification of each and every Half-Lot or Lot and each assessment applicable thereto, which books and records shall be kept in the office of the Association and shall be available for the inspection and copying by each Owner (or duly authorized representative of any Owner) at all reasonable times during regular business hours of the Association. The Board of Directors of the Association shall cause written notice of all assessments levied by the Association upon the Half-Lots and Lots and upon the Owners to be mailed to the Owners or their designated representatives as promptly as practicable and in any event not less than thirty (30) days prior to the due date of such assessment or any installment thereof. In the event such notice is mailed less than thirty (30) days prior to the due date of the assessment to which such notice pertains, payment of such assessment shall not be deemed past due for any purpose if paid by the Owner within thirty (30) days after the date of actual mailing of such notice.

(b) The Association shall promptly furnish to any Owner or Mortgagee, upon request, a certificate in writing signed by an officer of the Association, setting forth the extent to which assessment has been levied and paid with respect to such requesting Owner's or Mortgagee's Half-Lot or Lot. As to any persons relying thereon, such certificate shall be conclusive evidence of payment of any assessments therein stated to have been paid.

(c) The Association shall notify any Mortgagee from which it has received a written request for notice of any default in the performance by any Owner of any obligation under the By-Laws or this Declaration which is not cured within sixty (60) days.

(d) The Association shall, upon notification of conveyance of a Half-Lot or interest therein, provide a copy of this Declaration to the persons or entities receiving said interest.

Section 9. Non-payment of Assessments; Remedies of Association.

(a) If any assessment is not paid on the date when due, then such assessment shall be deemed delinquent and shall together with any interest thereon and any cost of collection thereof, including attorneys' fees, become a continuing lien on the Half-Lot or Lot against which such assessment was made, and such lien shall be binding upon and enforceable as a personal liability of the Owner of such Half-Lot or Lot as of the date of levy of such assessment, and shall be enforceable against the interest of such Owner and all future successors and assignees of such Owner in such Half-Lot or Lot; provided, however, that such lien shall be subordinate to any





The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Half-Lot or Lot owned. When more than one person holds an interest in any Half-Lot or Lot, all such persons shall be members. The vote for such Half-Lot or Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Half-Lot or Lot.

Class B. The Class B membership shall consist of the Declarant, who shall be entitled to three (3) votes for each Half-Lot or Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Section 3. Board Of Directors. The members shall elect a Board of Directors of the Association as prescribed by the By-Laws. The Board of Directors shall manage the affairs of the Association.

Section 4. General Duties of the Association. The Association is hereby authorized to act and shall act on behalf of, and in the name, place and stead of, the individual Owners in all matters pertaining to the maintenance, repair and replacement, of the Common Areas, the determination of Common Expenses, the collection of annual and special assessments, and the granting of any approvals whenever and to the extent called for by this Declaration, for the common benefit of all such Owners. The Association shall also have the right, but not the obligation, to act on behalf of any Owner or Owners in seeking enforcement of the terms, covenants, conditions and restrictions contained in this Declaration.

Section 5. Liability of Association. Neither the Association nor its directors, officers or authorized agents shall have any liability whatsoever to any Owner for any action taken under color or authority of this Declaration, or for any failure to take any action called for by this Declaration, unless such act or failure to act is in the nature of a willful or reckless disregard of the rights of the Owners or in the nature of the willful, intentional, fraudulent, or reckless misconduct.

Section 6. Amendment of Declaration. The Association shall have the right to amend this Declaration at any time, and from time to time, upon the recommendation of an amendment to the Association by its Board of Directors, and the subsequent approval of such amendment by both the Owners of at least two-thirds of the Half-Lots and Lots and at least two-thirds of the Mortgagees requesting notice of such action; provided, however, that any such amendment of this Declaration shall require prior written approval of Declarant at all times prior to the Class B membership being

converted to Class A membership as prescribed in subsection 2 of this Article IX.

Section 7. Insurance. The Association shall maintain in force adequate public liability insurance protecting the Association against liability for property damage and personal injury with the amount of such coverage in no event to be less than One Million Dollars (\$1,000,000.00) for any single occurrence, occurring on or in connection with any and all Common Areas. The Association shall also maintain in force adequate fire and extended coverage insurance, insuring all Common Property against fire, and extended coverage insurance, insuring all Common Areas against fire, windstorm, vandalism, and such other hazards as may be insurable under standard "extended coverage" provisions in an amount equal to the full replacement value of such Common Area improvements. The Association shall notify all Mortgagees which have requested notice of any lapse, cancellation, or material modification of any insurance policy. All policies of insurance shall contain an endorsement or clause whereby the insurer waives all rights of subrogation on any claim against the Association, its officers, Board members, the Declarant, any property manager, their respective employees and agents, the Half-Lot and Lot Owners and occupants, and also waives any defenses based on co-insurance or on invalidity arising from acts of the insured, and shall cover claims of one or more insured parties against other insured parties.

The Association shall maintain a fidelity bond indemnifying the Association, the Board of Directors and the Half-Lot and Lot Owners for loss of funds resulting from fraudulent or dishonest acts of any director, officer, employee or anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The fidelity bond should cover the maximum amount of funds which will be in the custody of the Association or its management agent at any time, but in no event shall such fidelity bond coverage be less than the sum of three (3) months' assessments on all Half-Lots in CLEARBROOK VILLAGE and Lots in CLEARBROOK LAKES, plus the Association's reserve funds.

The Association shall cause all insurance policies and fidelity bonds to provide at least ten (10) days written notice to the Association, and all Mortgagees who have requested such notice, before the insurance policies or fidelity bonds can be canceled or substantially modified for any reason. The Association shall cause the provisions of all insurance policies and fidelity bonds to comply with the Federal National Mortgage Association lending guide Chapter 3, Part 5, as established on January 3, 1983, as amended on June 30, 1983, or as such guidelines may be amended thereafter.

Section 8. Condemnation, Destruction. In the event that any of the Common Areas shall be condemned or taken by any competent public authority, or in the event the same shall be damaged or

6  
7

destroyed by any cause whatsoever, the Association shall represent the interests of the Owners in any proceedings, negotiations, insurance adjustments, settlements, or agreements in connection with such condemnation, damage, or destruction. Any sums recovered by the Association shall be applied, first, to the restoration and repair of any Common Area condemned, damaged, or destroyed, to the extent such restoration or repair is practicable, and the balance of such sums shall either be held as a reserve for future maintenance of the Common Area or turned over to the Owners in proportion to their Pro-Rata Shares, whichever may be determined by a majority vote of the members of the Association. Each Owner shall be responsible for pursuing his own action for damages to his Half-Lot or Lot, either by reason of direct damage thereto or by reason of an impairment of value due to damage to the Common Areas; provided, however, that upon request of any Owner(s), the Association shall pursue such claims on such requesting Owner(s) behalf, and shall turn any recoveries for such Owners over to such Owners directly. The Association shall notify all Mortgagees of which it has notice of any condemnation, damage, or destruction of any Common Area.

Section 9. Mortgagees' Rights. The Mortgagees shall have the right, at their option, jointly or severally, to pay taxes or other charges which are in default or which may or have become a charge against the Common Area to pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area, and Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE X.

General Provisions

0  
0  
0  
0  
0  
0  
0  
0  
0  
0

Section 1. Covenants Run With the Land. The covenants created by this Declaration shall attach to and run with the Real Estate and shall be binding upon every person who may hereafter come into ownership, occupancy or possession of any portion of the Real Estate.

Section 2. Scope of Covenants. Declarant and each Owner of any Half-Lot or Lot by acceptance of a deed therefor, whether or not it shall be expressed in such deed, are deemed to have agreed to each and every one of the various terms, Covenants, and conditions contained in this Declaration, and the same shall be of mutual and reciprocal benefit to Declarant and each Owner of each Half-Lot or Lot. Declarant and each Owner shall be entitled to enforce this Declaration against any Owner to the full extent permitted herein and under applicable law, and shall have all rights and remedies for such enforcement at law or in equity. Each Owner shall be liable for such enforcement at law or in equity.

Each Owner shall be liable for any failure to fully comply with all of the terms, Covenants, and conditions, contained in this Declaration only so long as each such Owner shall have any interest in any Half-Lot or Lot; provided, however, that the relinquishing of all of such interest shall not operate to release any Owner from liability for a failure to comply with this Declaration which occurred while said Owner had such interest.

Section 3. Attorneys' Fees. As to any legal or equitable proceedings for the enforcement of, or to restrain the violation of, this Declaration or any provision thereof, if the party bringing such action is successful in obtaining any remedy against any defaulting Owner, such defaulting Owner shall pay the reasonable attorneys' fees of such successful party, in such amount as may be fixed by the Court in such proceedings.

Section 4. Failure to Enforce Not a Waiver of Rights. The failure of Declarant, the Association, or any Owner to enforce any term, Covenant, or condition, herein contained shall in no event be deemed to be a waiver of the right to do so thereafter, nor of the right to enforce any other such term, Covenant or condition.

Section 5. Rights of Mortgagees. Except to the extent otherwise provided in Article VIII no breach of this Declaration shall defeat or render invalid the lien of any mortgage now or hereafter executed upon any portion of the Real Estate; provided, however, that if all or any portion of said Real Estate is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. The provisions of Article VIII hereinabove notwithstanding, neither the Owners nor the Association shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of the Real Estate at the time of such amendment.

Section 6. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions thereof.

Section 7. Section Headings. Section headings used herein are used for convenience only and are not intended to be a part of this Declaration or in any way to define, limit, or describe the scope and intent of the particular sections to which they refer.

Section 8. Notices. All notices in connection with this Declaration shall be made in writing and shall be deemed delivered (a) upon personal delivery to the individual person, if any, designated in writing by the Owner, as listed in the roster of

6  
7

0  
0  
0  
0  
0  
0  
0  
0  
0  
0

Owner's names and addresses referred to in Article VIII; or (b) seventy-two hours after the deposit thereof in any United States main or branch post office, first class postage prepaid, properly addressed to the addressee thereof at the address listed in the said roster.

Section 9. Limitations and Declarant's Rights. Any notice to or approval by Declarant under any provision of this Declaration shall not be necessary after the Class B membership has been converted to Class A membership pursuant to Section 2 of Article IX herein.

Section 10. Deed Clause to Implement Declaration. Each Owner covenants and agrees that it will not execute or deliver any deed or conveyance of a fee title interest in any Half-Lot or Lot, or any portion thereof, unless such deed or conveyance contains a clause substantially as follows:

"By acceptance and recording of this conveyance, the Grantee herein covenants and agrees to be bound by the Declaration of Covenants and Restrictions For Clearbrook Village and Clearbrook Lakes pertaining to the Real Estate hereby granted, which is recorded in the Office of the Recorder of Johnson County, Indiana",

and properly identifying the instrument number therein. However, the failure to include such clause shall not have any effect on this Declaration or the enforceability thereof against any Owner of any interest in any portion of the Real Estate.

Section 11. Provision Against Merger. Declarant hereby intends that the Real Estate shall be subject to this Declaration, that the Covenants contained herein shall not be merged into the title of the Declarant regardless of whether Declarant is the fee title owner of all or any part of the Real Estate at the time this Declaration is executed or recorded.

Section 12. Reservations of Declarant. The provisions of Article IX hereof notwithstanding, Declarant hereby reserves the right to make such amendments to this Declaration as may be deemed necessary or appropriate by Declarant, at any time prior to the Class B membership being converted to Class A membership, pursuant to Article IX, Section 2 without the approval or consent of the Owners or Mortgagees of the Half-Lots or Lots; provided that Declarant shall not be entitled to make any amendment which has a materially adverse effect on the rights of any Mortgagee, nor which substantially impairs the benefits of this Declaration to any Owner, or substantially increases the obligations imposed by this Declaration on any Owner.

Section 13. Rights to Common Areas. Title to all Common Areas shall be held in the Association, and each Owner shall have,

in the form of non-exclusive, reciprocal easements appurtenant to his Half-Lot or Lot, a right of access to his Half-Lot or Lot over the Streets, the right to the use of all Common Areas as parks or open spaces and the right of access thereto over the Streets, and the right of access to and use of the Drainage System, the Sewage System, and all utility lines and mains abutting or adjacent to his Half-Lot or Lot; provided, however, that no Owner's use of any Common Area shall materially interfere with any other Owner's use thereof. In the event that any Owner's use of any Common Area causes such an interference, the Association or any Owner shall have all rights and remedies provided at law or in equity, for such interference.

Section 14. Transfer of Control of Owner's Association and Quitclaim Deed of Common Areas. Declarant shall transfer control of the Owner's Association to the Lot Owners and give a Quitclaim Deed for the Common Areas to the Association no later than the earlier of (a) four months after three-fourths (3/4) of the Half-Lots and Lots have been conveyed to purchasers or (b) five (5) years after the first Half-Lot or Lot is conveyed.

In Witness Whereof, the Declarant has caused this Declaration to be executed on the date first above written.

McGINNIS/ALTON PARTNERSHIP

By: Kevin McGinnis Pres  
The McGinnis Corporation  
General Partner,  
BY: Kevin McGinnis, President

STATE OF INDIANA )  
COUNTY OF JOHNSON ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Kevin McGinnis, President of The McGinnis Corporation, a general partner, who acknowledged the execution of the foregoing, and who having been duly sworn upon his oath, stated that the representations therein contained are true.

My Commission Expires:

6-13-98

Linda L. Zickler  
Notary Public, LINDA L. ZICKLER  
Resident: Johnson County, IN

This instrument was prepared by J. Lee Robbins, VAN VALER WILLIAMS & HEWITT, 300 S. Madison Avenue, Suite 400, P.O. Box 405, Greenwood, IN, 46142.

mcginnis.lnc\alton\clbrook\declare.6

Land Description  
(Overall)

Part of the Southwest Quarter of Section 5, Township 13 North, Range 4 East of the Second Principal Meridian in Johnson County, Indiana, being described as follows:

Commencing at a P.K. nail at the southwest corner of said quarter section; thence on an assumed bearing of North 00 degrees 00 minutes 00 seconds East along the west line of said quarter section a distance of 659.35 feet to the Point of Beginning; thence North 87 degrees 37 minutes 13 seconds East a distance of 422.12 feet; thence South 60 degrees 07 minutes 23 seconds East a distance of 1081.78 feet to the east line of the southwest quarter of said southwest quarter; thence South 00 degrees 00 minutes 33 seconds West along the west line of the west half of the southeast quarter of said southwest quarter section a distance of 94.23 feet to a P.K. nail at the southwest corner of said half-quarter-quarter section; thence North 87 degrees 42 minutes 27 seconds East along the south line of said half-quarter-quarter section a distance of 671.73 feet to a P.K. nail at the southeast corner thereof; thence North 00 degrees 00 minutes 49 seconds East along the east line of said half-quarter-quarter section a distance of 1346.51 feet to a 5/8 inch rebar with yellow cap marked "Schneider Eng. Firm #0001" at the northeast corner thereof; thence North 87 degrees 40 minutes 04 seconds East along the south line of the northeast quarter of said southwest quarter section a distance of 671.86 feet to the southeast corner of said quarter-quarter section, being a point 0.3 feet east and 0.9 feet south of a 5/8 inch rebar; thence North 00 degrees 01 minutes 08 seconds East along the east line of said quarter-quarter section a distance of 1348.98 feet to a concrete monument at the northeast corner of said southwest quarter section; thence South 87 degrees 37 minutes 41 seconds West along the north line of said southwest quarter section a distance of 2687.94 feet to a railroad spike at the northwest corner thereof; thence South 00 degrees 00 minutes 00 seconds West along the west line of said southwest quarter section a distance of 901.78 feet to a P.K. nail at the northwest corner of a tract of land described in a deed to Richard A. and Cheryl A. Jedele recorded in Deed Record 258, page 918 in the Office of the Recorder of Johnson County, Indiana (the following three courses being along the north, east and south lines of said Jedele tract): thence North 87 degrees 50 minutes 15 seconds East a distance of 467.02 feet to a 5/8 inch rebar with yellow cap marked "Schneider Eng. Firm #0001"; thence South 00 degrees 00 minutes 00 seconds West a distance of 466.69 feet to a point which lies 0.3 feet north and 0.8 feet west of a 1/2 inch rebar; thence South 87 degrees 50 minutes 15 seconds West a distance of 467.02 feet to a point on the west line of said southwest quarter section which lies 0.1 feet north and 0.8 feet west of a P.K. nail 3 inches down; thence South 00 degrees 00 minutes 00 seconds West along said west line a distance of 662.40 feet to the Point of Beginning. Containing 125.839 acres, more or less.

Nov 4 11 46 AM '94

RECEIVED FOR RECORD  
BOOK 67 PAGE 882  
JACQUOLINE E. KELLER  
JOHNSON COUNTY RECORDER